IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 33980 of 2006(T)

PETITIONER:

T.JOHN ROSE,
PROPRIETOR, SREE BALAJI AGENCIES,
36/2247, SANKOORIKKAL BUILDING,
KADAVANTHARA NEW ROAD, COCHIN-682 017.

BY ADV.SMT.NALINI CHITHAMBARAM (SR).
SRI.T.P.KELU NAMBIAR (SR.)
SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP
SMT.PREEJA. P.VIJAYAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
ITS CHIEF SECRETARY, GOVT. OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. SECRETARY,
TAXES (H) DEPARTMENT, GOVT. OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. COMMISSIONER OF COMMERCIAL TAXES,
COMMERCIAL TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

4. THE ASSISTANT COMMISSIONER,
(ASSESSMENT), SALES TAX OFFICE,
SPECIAL CIRCLE - I, ERNAKULAM, COCHIN-18.

5. DEPUTY COMMISSIONER,
SALES TAX OFFICE, ERNAKULAM, COCHIN-18.

6. DIRECTOR OF LOTTERIES,
ARUNACHAL PRADESH STATE LOTTERIES,
ARUNACHAL PRADESH.

7. UNION OF INDIA, THROUGH
ITS SECRETARY, MINISTRY OF HOME AFFAIRS,

NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI.

BY ADV. SRI.ALEX VARGHESE, CGC - R7
SRI.V.T.GOPALAN (SR) - R6
SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR
SPL. GOVERNMENT PLEADER (TAXES) SRI.V.V.ASOKAN – R1 TO R5

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON ON 31/01/2007, THE COURT ON 08/02/2007 DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 33980 OF 2006-T

JUDGMENT

The short point that arises for decision in this case, is whether the petitioner, who is not directly appointed by the State of Arunachal Pradesh as promoter for the sale of paper lottery tickets of the said Government in Kerala, is entitled to get registration under Section 7 of the Kerala Tax on Paper Lotteries Act, 2005 (hereinafter referred to as 'the Act').

2. The petitioner is a dealer of the tickets of paper lotteries organised by the State of Arunachal Pradesh. For selling the tickets of the said lottery in Kerala, he should get registration under Section 7 of the Act. He submitted Ext.P6 application for registration. But, the 4th respondent, the competent authority to grant registration, did not accept the application. In the above background, this Writ Petition was filed, praying, inter alia, for a direction to the 4th respondent to receive, consider and pass appropriate orders on Ext.P6. Pursuant to the interim order of this Court dated 20.12.2006, the application was received. The 4th respondent considered the application, after affording an opportunity of being heard to the petitioner and rejected it, by Ext.P11 order dated 5.1.2007. The writ petition was,

therefore, amended, incorporating the challenge against Ext.P11.

3. The petitioner submits, he is already having registration as promoter under the Act, as evident from Ext.P3, for selling the tickets of the lotteries organised by the Royal Government of Bhutan and therefore, there is no necessity for further getting registration under the Act, for selling the tickets of the lotteries of the Government of Arunachal Pradesh. Without prejudice to that contention, the petitioner applied for registration as the promoter for the lottery run by the Government of Arunachal Pradesh. The said application was not received for extraneous reasons. The Kerala Government is also organising paper lotteries. To prevent competition to its lotteries, the Kerala Government is doing everything possible to obstruct and prevent the sale of the lottery tickets of other States. Thus, with mala fide intentions, the 4th respondent did not receive the application. The application received pursuant to the direction of this Court has been dismissed on erroneous grounds, it is submitted.

4. The stand of the 4th respondent in Ext.P11 is that no reliable material has been produced to show that the petitioner has been appointed as the promoter by the Arunachal Pradesh Government to sell its lottery tickets in Kerala. The Arunachal Pradesh Relief and Welfare Charitable Society is the promoter for sale of tickets of the lotteries organised by the

Arunachal Pradesh Government. The said Society appointed M/s. Sri Krishna Agency, to act on its behalf as distributor. The said Sri Krishna Agency has appointed Sree Balaji Agencies, run by the petitioner, as its selling agent in Kerala. So, the 4th respondent held that the petitioner was never directly appointed by the Arunachal Pradesh Government and therefore, he cannot be treated as a promoter. On that ground, Ext.P11 was passed. But, the petitioner would contend that the appointment made by the promoter's agent's agent will be sufficient for the purpose of registration. So,the petitioner prays for quashing Ext.P11 and seeks consequential reliefs.

5. The respondents 1 and 2 have filed a counter affidavit, supporting the impugned order. The main contention urged by them is that the petitioner is not a promoter, as defined under Section 2(l) of the Act. He has not been appointed by the Government of Arunachal Pradesh. Therefore, there is nothing illegal with Ext.P11, it is submitted.

6. I heard learned senior counsel Smt.Nalini Chidambaram for the writ petitioner, learned Special Government Pleader Sri.V.V.Asokan for respondents 1 to 5 and learned senior counsel Sri.V.T.Gopalan, appearing for the 6th respondent. I also heard Sri.Alex Varghese, Central Government Counsel for the 7th respondent Union of India.

7. The learned senior counsel for the petitioner brought to my notice Section 4(c) of the Lotteries (Regulation) Act, 1998, which provides that the State Government shall sell the lottery tickets either by itself or through distributors or selling agents. According to her, the word "promoter" defined in Section 2(l) of the Act should be understood in the light of the above said provision in the Central Act. If that be so, there need not be any direct appointment by the Arunachal Pradesh Government, it is submitted. The learned senior counsel pointed out that by Ext.P1 communication dated 13.12.2006, the Arunachal Pradesh Government has informed the Kerala Government that the petitioner has been appointed as the approved promoter/main stockist for marketing its lottery tickets in the State of Kerala, by M/s. Sri Krishna Agency, which in turn, has been appointed by the Arunachal Pradesh Relief and Welfare Charitable Society, which is the authorised distributor of Arunachal Pradesh State Lotteries organised by the Arunachal Pradesh Government.

8. Ext.P7(3), at page 50 of the paper book of the amended writ petition, is the agreement between the Government of Arunachal Pradesh and the Arunachal Pradesh Relief and Welfare Charitable Society, appointing the latter as the distributor for the lottery tickets of Arunachal Pradesh. Ext.P7(9), at page 56, is the deed of agreement between the

aforementioned Society and M/s. Sri Krishna Agency. Ext.P7(16), at page 63, is the agreement between M/s.Sri Krishna Agency and M/s. Sree Balaji Agencies, run by the petitioner. By Ext.P10, the Arunachal Pradesh Government recognised the petitioner as the selling agent of its lotteries in Kerala, on the strength of the appointment made by M/s.Sri Krishna Agency. In view of the above documents, the petitioner prays for quashing Ext.P11 and seeks a direction to the 4th respondent to grant registration to him, as the promoter of Arunachal Pradesh lotteries. The learned Additional Solicitor General, who appeared for the 6th respondent also supported the above submissions of the learned senior counsel for the petitioner. He also added that the Arunachal Pradesh Government undertakes to pay the tax due to the Kerala Government, if there is any default from the part of the petitioner in paying any tax on paper lotteries to the Kerala Government, payable for the sale of lottery tickets of Arunachal Pradesh.

9. Learned Special Government Pleader Sri.V.V.Asokan raised a preliminary objection that the writ petition is not maintainable, in view of the efficacious remedy of appeal available to be petitioner under Section 14 of the Act. He also submitted that as long as the petitioner is not appointed by the Arunachal Pradesh Government, he is not entitled to get registration.

He also relies on the discrepancies in the documents produced by the petitioner, which have been noticed by the 4th respondent in Ext.P11. He points out that Ext.P1 dated 13.12.2006 deals with the appointment of the petitioner with effect from 15.1.2007, made on 15.12.2006, as per Ext.P7 (16). So, the learned Special Government Pleader points out that the documents produced by the petitioner are not reliable.

10. The first point to be considered is whether the writ petition has to be dismissed, based on the preliminary objection raised by the learned Special Government Pleader. According to him, Section 14 provides an efficacious remedy to the writ petitioner. The said Section reads as follows:

> "14. Appeals:-
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> (1) Any person objecting to an order affecting him passed under the provisions of this Act by the Assistant Commissioner may appeal to the Deputy Commissioner (Appeal) (hereinafter called the Appellate Authority) of the concerned jurisdiction.
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> (2) The appeal shall be preferred within thirty days from the date of communication of the order appealed against.
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> (3) No appeal against the order shall be entertained by the Appellate Authority unless it is accompanied by satisfactory proof of payment of tax and penalty not disputed in appeal.
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> (4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
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> (5) In disposing of an appeal, the Appellate Authority, may, after giving the appellant a reasonable opportunity of being heard,
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> (i) set aside the order, or reduce,or enhance the amount stated therein or annul;

> (ii) pass such orders as it may think fit, for reasons to be recorded in writing.
>
> (6) Every order passed on appeal under this section shall, subject to the provisions of section 18 be final."

The above underlined portion of Section 14 would show that the appeals contemplated under Section 14 relate to orders assessing tax. Even assuming the said section will cover orders in the nature of Ext.P11 also, I feel that an appeal from the 4th respondent to the Deputy Commissioner of Appeal is like an appeal from 'Caesar to Caesar's wife'. Having regard to the contentions taken up by respondents 1 to 5, no purpose will be served by preferring a statutory appeal. Therefore, the preliminary objection raised by the learned Special Government Pleader is untenable.

11. The term "promoter" is defined in Section 2(l) of the Act, which reads as follows:

> "(l) 'Promoter' means the Government of India or Government of a State or a Union Territory or any Country who had entered into a bi-lateral agreement or a treaty with the Government of India for organizing, conducting or promoting a lottery and includes, any person appointed for selling lottery tickets by the Government in the State of Kerala on its behalf, where such Government is not directly selling lottery tickets in the State."

Going by the said Section, apart from the State Government concerned, which is organizing the lottery, another person can be treated as promoter, if

only he is appointed by the Government. Neither the petitioner, nor the 6th respondent has a case that the petitioner has been appointed by the Arunachal Pradesh Government. The only claim made is that the Arunachal Pradesh Government has appointed a Charitable Society, which in turn, has appointed M/s.Sri Krishna Agency. The said Sri Krishna Agency has appointed the petitioner. So, the petitioner is not directly appointed by the Arunachal Pradesh Government. As rightly pointed out by the 4th respondent and the learned Special Government Pleader, Ext.P1 cannot be relied on. As per Ext.P7(16), at page 63 of the paper book, M/s.Sri Krishna Agency appointed the petitioner as the sole selling agent/promoter for Kerala only on 15.12.2006. But, Ext.P1 letter dated 13.12.2006 mentions of that appointment made on 15.12.2006. So, Ext.P1 appears to be a sham document. Further, Ext.P1 only speaks of appointment of the petitioner by the agent's agent of the Government of Arunachal Pradesh. Ext.P10 is practically a re-production of Ext.P1 with the change of date of the document. Exts.P1 and P10 specifically say that M/s. Sree Balaji Agencies, the proprietory concern of the petitioner will be responsible for the sales tax/compound tax/VAT and other Government levies. Against the above express words in the last paragraphs of Exts.P1 and P10, the 6th respondent undertook that the Arunachal Pradesh Government will be responsible for

any default from the part of the petitioner to pay the tax on paper lotteries. But, the said undertaking will not cure the basic defect in the appointment of the petitioner. Though, the learned senior counsel for the petitioner tried to explain how a letter dated 13.12.2006 could mention of an agreement entered into on 15.12.2006, the same was least convincing. Further, I feel that it is unnecessary to probe into the said dispute in this case, as going by Section 2(l) of the Act, a person appointed by the Arunachal Pradesh Government alone can be treated as the promoter. The plain literal meaning of Section 2(l) does not admit any other interpretation. The view taken by the 4th respondent in this regard is certainly a plausible view,with which this Court cannot interfere under Article 226 of the Constitution of India. At any rate, it cannot be described as an unreasonable view in the light of the facts of the case. Lord Hailsham of St.Marylebone L.C., in **In re W. (An Infant)** (1971 A.C. 682) held that two reasonable persons can perfectly, reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable. So, I find no reason to interfere with Ext.P11.

12. The learned senior counsel appearing for the petitioner pointed out that the Kerala Government is trying to prevent the sale of lottery tickets

of Arunachal Pradesh Government, which it cannot do directly. I think, the said contention cannot be accepted. If the Arunachal Pradesh Government applies for registration as promoter, it shall be granted registration. If the Arunachal Pradesh Relief and Welfare Charitable Society applies, it shall also be granted registration. If the Arunachal Pradesh Government directly appoints the petitioner as the selling agent of the tickets of its lotteries in Kerala, then the petitioner shall also be granted registration. Without satisfying the requirement of Section 2(l) of the Act, the petitioner cannot claim registration. It may be noticed that the petitioner does not challenge any of the provisions of the Act. The denial of registration to a stranger like the petitioner, who is not eligible to get registration in terms of the provisions of the Kerala Act, cannot be described as an act of hostility against the sale of tickets of lotteries organised by the Arunachal Pradesh Government. The petitioner has no locus standi to canvass this point on behalf of the Arunachal Pradesh Government.

13. Though, at the outset, the petitioner pointed out that the registration obtained by him as the promoter of Bhutan Lotteries will enable him to sell the tickets of Arunachal Pradesh Lotteries also, the said point was not seriously canvassed by the learned senior counsel for the petitioner.

Going by the definition of promoter, the said contention is plainly untenable.

In the result, the Writ Petition fails and it is dismissed. No costs.

8th February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/